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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/655,355	09/04/2003	Gregory D. Fowler	60073.0005US01	1568
23552	7590	01/25/2006	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			JUSKA, CHERYL ANN	
			ART UNIT	PAPER NUMBER
			1771	
DATE MAILED: 01/25/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/655,355

Applicant(s)

FOWLER, GREGORY D.

Examiner

Cheryl Juska

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) 1-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on 04 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>09/03 & 10/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Election

1. Applicant's election of Group II, claims 19-44, with traverse in the paper filed June 13, 2005, is acknowledged. However, because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claims 1-18 are hereby withdrawn as non-elected.

Claim Objections

2. Claims 19-29 are objected to because the preambles are drawn to a secondary backing, while the body of the claims describe a carpet comprising said secondary backing.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 30, 32, 33, 35, 37-40 are rejected under 35 USC 102(b) as being anticipated by US 5,484,639 issued to Woodall et al.

Woodall discloses a secondary backing for carpets comprising a woven backing having additional yarns of a different color woven into said backing in the warp or machine direction

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(abstract). Said secondary backing is preferably made of slit film or tape polypropylene yarns in the warp direction and polypropylene spun yarns (i.e., staple yarns) in the weft direction (col. 3, lines 27-38). The colored yarns are preferably of the same type yarn as the warp yarns (col. 3, lines 66-67). Said colored yarns are woven into the backing in bands of three yarns wherein said yarns within said bands have a preferred spacing of about slightly less than 1 inch (col. 3, lines 39-51). The secondary backing is adhered to a tufted primary backing, preferably with SBR latex, to produce the inventive carpet (col. 3, lines 13-26).

Thus, Woodall teaches the limitations of claim 38 with the exception that the additional colored warp yarns are “reinforcing” yarns. However, it is argued that Woodall anticipates the claims since “reinforcing” is merely descriptive of the function of said yarns and does not limit the yarns in any structural sense other than to limit the fabric to having additional warp yarns interwoven into the fabric. Therefore, claims 38-42 are anticipated by the cited Woodall reference.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 31 is rejected under 35 USC 103(a) as being unpatentable over the cited Woodall reference.

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While Woodall does not explicitly teach the additionally warp yarns are located within two inches of each respective edge of the fabric, it would have been readily obvious to one of ordinary skill in the art to modify the spacing and/or location of said yarns in order to produce different directional guides. Therefore, claim 31 is also rejected.

7. Claims 34 and 44 are rejected under 35 USC 103(a) as being unpatentable over the cited Woodall reference in view of US 6,060,145 issued to Smith et al.

While Woodall exemplifies a leno weave secondary backing comprising 8 ends/in by 5 picks/in, it would have been readily obvious to employ a backing having 16 ends/in by 5 picks/in since this leno construction is also known in the art as suitable for secondary carpet backings. For example, Smith '145 teaches a secondary carpet backing comprising a 16 x 5 leno weave construction (col. 14, lines 13-20). Thus, it would have been readily obvious to modify the weave construction of Woodall to other known configurations, such as that taught by Smith '145 with the expectation of producing a successful secondary carpet backing. Therefore, claims 34 and 44 are also rejected.

8. Claims 19-28, 36, and 43 are rejected under 35 USC 103(a) as being unpatentable over the cited Woodall reference in view of US 4,406,310 issued to Reader et al.

While Woodall teaches the additional yarns are preferably tape yarns, it would have been readily obvious to one of ordinary skill in the art to substitute another yarn construction for the tape yarn in order to more readily recognize the yarn and/or to impart other properties to carpet backing. For example, Reader teaches spun yarns may be employed in both the warp and weft directions of secondary carpet backings, as in the traditional jute fabrics (col. 3, line 65-col. 4, line 12). Reader also teaches that synthetic secondary carpet backing may comprise all spun

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yarns, but typically do not for economic reasons. Said spun yarns, like the jute yarns, are generally open with loose ends that permit latex adhesive penetration and improve adhesion of the secondary backing to the carpet substrate. Thus, it would have been obvious to one skilled in the art to substitute spun yarns for the additional tape yarns of Woodall in order to produce a more visually distinguishable yarn while increasing the bond strength between the primary and secondary backings. Therefore, claims 36 and 43 are rejected.

Regarding claims 19-28, upon employing a spun yarn for the additional warp yarn of Woodall, it is argued that the limitation of an increase in delamination strength would be met since the structural limitations of the claim are met. In other words, like materials cannot have mutually exclusive properties. Therefore, claims 19-28 are also rejected.

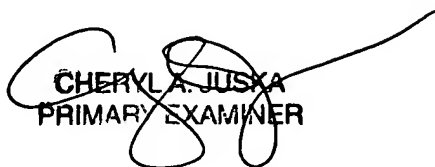
Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CHERYL A. JUSKA
PRIMARY EXAMINER

cj
January 23, 2006